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14 UNITED STATES DISTRICT COURT
15
16 NORTHERN DISTRICT OF CALIFORNIA
17
18 SAN FRANCISCO DIVISION
19

20 UNITED STATES OF AMERICA,)	No. CR 05-0208 (CRB)
)	
21 Plaintiff,)	
)	
22 v.)	<u>PLEA AGREEMENT</u>
)	
23 HOWE ELECTRIC, INC.,)	
)	
24 Defendant.)	
)	

25 PLEA AGREEMENT

26 The United States of America and Howe Electric, Inc. ("defendant"), a corporation
27 organized and existing under the laws of California, hereby enter into the following Plea
28 Agreement pursuant to Rules 11(c)(1)(A) and 11(c)(1)(C) of the Federal Rules of Criminal
Procedure ("Fed. R. Crim. P.):

PLEA AGREEMENT HOWE ELECTRIC

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3 **RIGHTS OF DEFENDANT**

4 1. The defendant understands its rights:

5 (a) to be represented by an attorney;

6 (b) to plead not guilty to any criminal charge brought against it;

7 (c) to have a trial by jury, at which it would be presumed not guilty of the
8 charges and the United States would have to prove every essential element of the charged
9 offenses beyond a reasonable doubt for it to be found guilty;

10 (d) to confront and cross-examine witnesses against it and to
11 subpoena witnesses in its defense at trial;

12 (e) to appeal its conviction, if it is found guilty at trial; and

13 (f) to appeal the imposition of sentence against it.
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15 **AGREEMENT TO PLEAD GUILTY**
16 **AND WAIVE CERTAIN RIGHTS**

17 2. The defendant knowingly and voluntarily waives the rights set out in Paragraph
18 1(b) – (e) above. The defendant also knowingly and voluntarily waives the right to file any
19 appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal
20 under 18 U.S.C. § 3742, that challenges the sentence imposed by the Court if that sentence is
21 consistent with or below the recommended sentence in Paragraph 11 of this Plea Agreement,
22 regardless of how the sentence is determined by the Court. This agreement does not affect the
23 rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b) and (c). Nothing in
24 this paragraph, however, shall act as a bar to the defendant perfecting any legal remedies it may
25 otherwise have on appeal or collateral attack respecting claims of ineffective assistance of
26 counsel or prosecutorial misconduct. The defendant has been charged in a Superseding
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1 Indictment, United States v. VNCL, et al., CR 05-0208 CRB, filed in the United States District
2 Court for the Northern District of California. The Superseding Indictment charges the defendant
3 in Count One and Count Ten with participating in schemes and artifices to defraud the Federal
4 Communications Commission ("FCC") and the Universal Services Administrative Company
5 ("USAC") that utilized a wire communication in interstate commerce in violation of 18 U.S.C.
6 § 1343 (Wire Fraud) and 18 U.S.C. § 2 (Aiding and Abetting), and in Count Twelve and Count
7 Twenty with participating in conspiracies to suppress and eliminate competition in violation of
8 the Sherman Antitrust Act, 15 U.S.C. § 1 and 18 U.S.C. § 2.

11 3. The defendant, pursuant to the terms of this Plea Agreement, will plead guilty to
12 Count Twelve and Count Twenty of the Superseding Indictment and will make a factual
13 admission of guilt to the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraphs
14 4 and 5 below. The United States agrees to move to dismiss the defendant from Count One and
15 Count Ten of the Superseding Indictment immediately following the imposition of the sentence.

17 **FACTUAL BASIS FOR SHERMAN ACT OFFENSE CHARGED IN COUNT TWELVE**

18 4. Had this case gone to trial, the United States would have presented evidence
19 sufficient to prove the following facts:

20 (a) E-Rate is a program created by Congress in the Telecommunications Act
21 of 1996 and operated under the auspices of the FCC to provide funding to connect schools and
22 libraries to the Internet. The FCC designated USAC, a nonprofit corporation, to administer the
23 E-Rate program. To fund the program, each month USAC collects funds from
24 telecommunications carriers that provide interstate telecommunications services and from certain
25 other providers of interstate telecommunications.

1 (b) The E-Rate program is designed to ensure that the neediest school districts
2 receive the most financial help. All participating school districts are required to fund a
3 percentage of the cost of the equipment and services acquired under the E-Rate program
4 (hereinafter referred to as "co-pay"). For schools and school districts, the amount of the co-pay is
5 based on the number of students in the district qualifying for the United States Department of
6 Agriculture's school lunch program, with the neediest schools and school districts eligible for the
7 highest percentage of funding. However, even the neediest schools and school districts are
8 required to fund at least 10% of the cost of the acquired equipment and services.
9

10
11 (c) At all times relevant to this Plea Agreement, with the exception of 1999,
12 school district applications for E-Rate funding far exceeded the funding available. The FCC had
13 the following rules and procedures to ensure that E-Rate funding was distributed to the widest
14 number of qualifying applicants: (1) only approved equipment, services, and supplies were
15 eligible for funding; (2) school districts could seek funding only for projects for which the
16 districts had secured access to the resources for their co-pay amount and for the purchase of the
17 end-user equipment and services necessary to utilize the applied-for equipment and services; (3)
18 in order to avoid a conflict of interest, service providers or their agents could not participate in
19 the vendor selection process and specifically could not provide self-interested advice and
20 complete, on behalf of the applicant, those documents (such as the FCC Form 470) that would
21 initiate the competitive bidding process; (4) school districts were required to follow local and
22 state law competitive bidding procedures to ensure that the school districts received the most
23 cost-effective bids from the responsive bidders; and (5) schools and school districts were
24 required to enter into contracts with the most cost-effective bidder prior to making application for
25 funds from USAC.
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1 (d) The defendant is an entity organized and existing under the laws of
2 California with its principal place of business in Fresno, California. From in or about November
3 1998 to in or about June 2001 (hereinafter, for Paragraph 4, "the relevant period"), the defendant
4 provided electrical and other contracting services in the Fresno, California area. During the
5 relevant period, the defendant submitted bids to school districts in California that were to be
6 funded by the FCC's E-Rate program, including a project at the West Fresno Elementary School
7 District ("West Fresno").
8

9 (e) During the relevant period, the defendant, through its employees, entered
10 into an agreement with codefendant Judy Green whereby the defendant would be awarded the
11 entire contract for the E-Rate project at West Fresno in exchange for awarding subcontracts to
12 coconspirator vendors. The coconspirator vendors had the capability to bid against the defendant
13 on the project, but had agreed with Green not to compete in exchange for the award of the
14 subcontracts. Pursuant to the agreement, Judy Green arranged for the West Fresno project to be
15 awarded to the defendant, and the defendant utilized the coconspirator vendors as subcontractors.
16 After the completion of the project, the defendant requested and received reimbursement from
17 the E-Rate program for the work that the defendant and the coconspirator subcontractor vendors
18 performed at West Fresno.
19

20 (f) Bid proposals, USAC forms, and supporting documents submitted as part
21 of the applications for the funding of substantial quantities of video and other telecommunication
22 and Internet-access equipment and services at the West Fresno project were transmitted from
23 locations in California to locations outside of California. Moreover, coconspirator vendors at the
24 West Fresno project shipped substantial quantities of servers, routers, switches, and Private
25 Branch Exchanges ("PBXs") from outside of California to Fresno, California, in a continuous
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1 and uninterrupted flow of interstate trade and commerce. During the relevant period, the
2 activities of the defendant and coconspirators that are the subject of Count Twelve of the
3 Superseding Indictment were within the flow of, and substantially affected, interstate trade and
4 commerce.
5

6 (g) Acts in furtherance of this conspiracy were carried out within the Northern
7 District of California and within five years preceding the date of the Superseding Indictment.

8 **FACTUAL BASIS FOR SHERMAN ACT OFFENSE CHARGED IN COUNT TWENTY**

9 5. Had this case gone to trial, the United States would have presented evidence
10 sufficient to prove the following facts:
11

12 (a) Paragraphs 4 (a) through (c) are realleged as if fully set forth here.

13 (b) The defendant is an entity organized and existing under the laws of
14 California with its principal place of business in Fresno, California. From in or about November
15 1999 to in or about July 2001 (hereinafter, for Paragraph 5, "the relevant period"), the defendant
16 provided electrical and other contracting services in the Fresno, California area. During the
17 relevant period, the defendant submitted bids to school districts in California that were to be
18 funded by the FCC's E-Rate program, including a project at the W.E.B. DuBois Charter School
19 ("W.E.B. DuBois").
20

21 (c) During the relevant period, the defendant, through its employees, entered
22 into an agreement with codefendant Judy Green whereby the defendant would be awarded the
23 entire contract for the E-Rate project at W.E.B. DuBois in exchange for awarding subcontracts to
24 coconspirator vendors. The coconspirator vendors had the capability to bid against the defendant
25 on the project but had agreed with Green not to compete in exchange for the award of the
26 subcontracts. Pursuant to the agreement, Judy Green arranged for the W.E.B. DuBois project to
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1 be awarded to the defendant, and the defendant utilized the coconspirator vendors as
2 subcontractors. After the completion of the project, the defendant requested and received
3 reimbursement from the E-Rate program for the work that the defendant and the coconspirator
4 subcontractor vendors performed at W.E.B. DuBois.

5
6 (d) Bid proposals, USAC forms, and supporting documents submitted as part
7 of the applications for the funding of substantial quantities of video and other telecommunication
8 and Internet-access equipment and services at the W.E.B. DuBois project were transmitted from
9 locations in California to locations outside of California. Moreover, coconspirator vendors at the
10 W.E.B. DuBois project shipped substantial quantities of servers, routers, switches, and Private
11 Branch Exchanges ("PBX") from outside of California to Fresno, California, in a continuous and
12 uninterrupted flow of interstate trade and commerce. During the relevant period, the activities of
13 the defendant and coconspirators that are the subject of Count Twenty of the Superseding
14 Indictment were within the flow of, and substantially affected, interstate trade and commerce.

15
16 (e) Acts in furtherance of this conspiracy were carried out within the Northern
17 District of California and within five years preceding the date of the Superseding Indictment.

18
19 **POSSIBLE MAXIMUM SENTENCE**

20 6. The defendant understands that the statutory maximum penalty which may be
21 imposed against it upon conviction for a violation of Section One of the Sherman Antitrust Act is
22 a fine equal to the greatest of:

- 23
24 (a) \$10 million (15 U.S.C. § 1);
25 (b) twice the gross pecuniary gain the conspirators derived from the crime (18
26 U.S.C. § 3571(c) and (d)); or
27 (c) twice the gross pecuniary loss caused to the victims of the crime by the
28

1 conspirators (18 U.S.C. § 3571(c) and (d)).

2 7. In addition, the defendant understands that:

3 (a) pursuant to 18 U.S.C. § 3561(c)(1), the Court may impose a term of
4 probation of at least one year, but not more than five years;

5 (b) pursuant to § 8B1.1 of the United States Sentencing Guidelines
6 (“U.S.S.G.,” “Sentencing Guidelines,” or “Guidelines”) or 18 U.S.C. §§ 3563(b)(2) or
7 3663(a)(3), the Court may order it to pay restitution to the victims of the offense; and

8 (c) pursuant to 18 U.S.C. § 3013(a)(2)(B), the Court is required to order the
9 defendant to pay a \$400.00 special assessment upon conviction for each of the charged crimes.
10

11 SENTENCING GUIDELINES

12 8. The defendant understands that the Sentencing Guidelines are advisory, not
13 mandatory, but that the Court must consider the Guidelines in effect on the day of sentencing,
14 unless, as authorized by U.S.S.G. § 1B1.11, the Court determines that use of the Guidelines
15 Manual in effect on the date that the defendant is sentenced would violate the *ex post facto* clause
16 of the United States Constitution. Therefore, the United States and defendant agree that the
17 Court must use the Guidelines Manual in effect in December 2000, along with the other factors
18 set forth in 18 U.S.C. § 3553(a), in determining and imposing sentence. The defendant
19 understands that the Guidelines determinations will be made by the Court by a preponderance of
20 the evidence standard. The defendant understands that although the Court is not ultimately
21 bound to impose a sentence within the applicable Guidelines range, its sentence must be
22 reasonable based upon consideration of all relevant sentencing factors set forth in 18 U.S.C.
23 § 3553(a). Pursuant to U.S.S.G. § 1B1.8, the United States agrees that self-incriminating
24 information that the defendant provides to the United States pursuant to this Plea Agreement will
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1 not be used to increase the volume of affected commerce attributable to the defendant or in
2 determining the defendant's applicable Guidelines range, except to the extent provided in
3 U.S.S.G. § 1B1.8(b).
4

5 **SENTENCING AGREEMENT**

6 9. The United States and the defendant agree to the following advisory Sentencing
7 Guidelines calculation:

8 For Counts Twelve and Twenty — Sherman Act :

- 9 (a) Base Offense Level (8C2.1, 8C2.3, and 2R1.1): 10
- 10 (b) Specific Offense Characteristics:
- 11 Bid Rigging (2R1.1(b)(1)): +1
- 12 Volume of Commerce (2R1.1(b)(2)(D))
- 13 West Fresno: \$6,045,734
- 14 W.E.B. DuBois: \$3,445,000
- 15 Total \$9,490,734 +4
- 16
- 17 (c) Adjusted Offense Level: 15
- 18 (d) Base Fine (2R1.1(d)(1)) 20% Volume of Commerce: \$1,898,147
- 19 (e) Culpability Score (8C2.5)(b)(4): 5 + 2 = 7
- 20 (>50 employees and an individual within substantial authority
- 21 personnel participated in, condoned, or was willfully ignorant of
- 22 the offense)
- 23 (f) Acceptance of Responsibility (8C2.5)(g)(3): -1
- 24 (g) Total Culpability Score: 6
- 25 (h) Minimum/Maximum Multiplier (8C2.6): 1.20 - 2.40
- 26 (i) Fine Range (8C2.7): \$2,277,776 - \$4,555,552
- 27
- 28

10. The defendant understands that, as part of its plea and a separate civil settlement, it will pay \$300,000 in criminal fines and \$3,000,000 in satisfaction of the civil settlement. The money paid in connection with the civil settlement shall satisfy its obligation to make restitution. (See U.S.S.G. § 8C2.9).

Criminal Fine	\$300,000
Civil Settlement and Restitution	\$3,000,000
Total	\$3,300,000

11. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and the defendant agree that the appropriate disposition of this case is, and agree to recommend jointly that the Court impose, a sentence requiring the defendant to pay to the United States a criminal fine of \$300,000, payable in full before the fifteenth (15th) day after the date of judgment. The parties agree that there exists no aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the U.S. Sentencing Commission in formulating the Sentencing Guidelines justifying a departure pursuant to U.S.S.G. § 5K2.0. The parties agree not to seek or support any sentence outside of the Guidelines range nor any Guidelines adjustment for any reason that is not set forth in this Plea Agreement. The parties further agree that the recommended sentence set forth in this Plea Agreement is reasonable.

(a) The defendant understands that the Court will order it to pay a \$800 special assessment, pursuant to 18 U.S.C. § 3013(a)(2)(B), in addition to any fine imposed.

(b) The defendant shall be placed on probation for a period of three (3) years on conditions including that the defendant:

- i. commit no violation of federal or state law;
- ii. comply with the terms and conditions of the civil settlement agreement attached as Exhibit A;

1 iii. cooperate fully with the government as set forth below.

2 (c) The parties agree that the defendant's payment of \$3,000,000 (including
3 restitution) shall be paid and distributed in accordance with the terms of such civil settlement
4 attached as Exhibit A.
5

6 12. The United States and the defendant agree that the applicable advisory Sentencing
7 Guidelines fine range exceeds the fine contained in the recommended sentence set out in
8 Paragraph 11 above. The United States and the defendant further agree that the recommended
9 fine is appropriate due to the inability of the defendant to pay a fine greater than that agreed to
10 without substantially jeopardizing its continued viability, pursuant to U.S.S.G. § 8C3.3(b).
11

12 13. The defendant agrees that defendant and its successors and assigns shall refrain
13 from providing equipment and services for any technology project funded in whole or in part by
14 the FCC's E-Rate program for a period of four (4) years from the date of this Plea Agreement.
15

16 14. The United States and the defendant understand that the Court retains complete
17 discretion to accept or reject the recommended sentence provided for in Paragraph 11 of this Plea
18 Agreement.

19 (a) If the Court does not accept the recommended sentence, the United States
20 and the defendant agree that this Plea Agreement, except for Paragraph 16(b) below, shall be
21 rendered void.
22

23 (b) If the Court does not accept the recommended sentence, the defendant will
24 be free to withdraw its guilty plea (Fed. R. Crim. P. 11(c)(5) and (d)). If the defendant withdraws
25 its plea of guilty, this Plea Agreement, the guilty plea, and any statement made in the course of
26 any proceedings under Fed. R. Crim. P. 11 regarding the guilty plea or this Plea Agreement or
27 made in the course of plea discussions with an attorney for the government shall not be
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1 admissible against the defendant in any criminal or civil proceeding, except as otherwise
2 provided in Fed. R. Evid. 410. In addition, the defendant agrees that, if it withdraws its guilty
3 plea pursuant to this subparagraph of the Plea Agreement, the statute of limitations period for any
4 offense referred to in Paragraph 16 of this Plea Agreement will be tolled for the period between
5 the date of the signing of the Plea Agreement and the date the defendant withdrew its guilty plea
6 or for a period of sixty (60) days after the date of the signing of the Plea Agreement, whichever
7 period is greater.
8

9
10 15. Subject to the ongoing, full, and truthful cooperation of the defendant, as
11 described in Paragraph 16 of this Plea Agreement, and before sentencing in the case, the United
12 States will fully advise the Court and the Probation Office of the fact, manner, and extent of the
13 defendant's cooperation and its commitment to prospective cooperation with the United States'
14 investigation and prosecutions, all material facts relating to the defendant's involvement in the
15 charged offense, and all other relevant conduct. To enable the Court to have the benefit of all
16 relevant sentencing information, the United States may request, and the defendant will not
17 oppose, that sentencing be postponed until the completion of any proceedings resulting from the
18 ongoing federal investigation into allegations of fraud and collusion related to the FCC's E-Rate
19 program.
20

21 DEFENDANT'S COOPERATION

22
23 16. The defendant will cooperate fully and truthfully with the United States in the
24 prosecution of this case, the conduct of the current federal investigation of violations of federal
25 antitrust and related criminal laws involving the FCC's E-Rate program, any other federal
26 investigation resulting therefrom, and any litigation or other proceedings arising or resulting from
27 any such investigation to which the United States is a party ("Federal Proceeding"). The
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1 ongoing, full, and truthful cooperation of the defendant shall include, but not be limited to:

2 (a) producing to the United States all non-privileged documents, information,
3 and other materials wherever located, in the possession, custody, or control of the defendant,
4 requested by the United States in connection with any Federal Proceeding; and
5

6 (b) using its best efforts to secure the ongoing, full, and truthful cooperation,
7 as defined in Paragraph 17 of this Plea Agreement, of each current and former director, officer, or
8 employee of the defendant as may be requested by the United States, including making these
9 persons available, at the defendant's expense, for interviews and the provision of testimony in
10 grand jury, trial, and other judicial proceedings in connection with any Federal Proceeding.
11

12 17. The ongoing, full, and truthful cooperation of each person described in Paragraph
13 16(b) above will be subject to the procedures and protections of this paragraph, and shall include,
14 but not be limited to:

15 (a) producing all non-privileged documents, including claimed personal
16 documents, and other materials, wherever located, requested by attorneys and agents of the
17 United States;
18

19 (b) making himself or herself available for interviews, not at the expense of
20 the United States, upon the request of attorneys and agents of the United States;
21

22 (c) responding fully and truthfully to all inquiries of the United States in
23 connection with any Federal Proceeding, without falsely implicating any person or intentionally
24 withholding any information, subject to the penalties of making false statements (18 U.S.C.
25 § 1001) and obstruction of justice (18 U.S.C. § 1503, *et seq.*);

26 (d) otherwise voluntarily providing the United States with any non-privileged
27 material or information, not requested in (a) – (c) of this paragraph, that he or she may have that
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1 is related to any Federal Proceeding; and

2 (e) when called upon to do so by the United States in connection with any
3 Federal Proceeding, testifying in grand jury, trial, and other judicial proceedings in the United
4 States, fully, truthfully, and under oath, subject to the penalties of perjury (18 U.S.C. § 1621),
5 making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623),
6 contempt (18 U.S.C. §§ 401 and 402), and obstruction of justice (18 U.S.C. § 1503, *et seq.*).
7

8 GOVERNMENT'S AGREEMENT

9 18. Subject to the full, truthful, and continuing cooperation of the defendant, as
10 described in Paragraph 16 of this Plea Agreement, and upon the Court's acceptance of the guilty
11 plea called for by this Plea Agreement and the imposition of sentence, the United States will,
12 immediately following the imposition of the defendant's sentence, move to dismiss the defendant
13 from Count One and Count Ten of Superseding Indictment No. CR 05-0208 CRB. The United
14 States further agrees to not bring further criminal charges against the defendant for any act or
15 offense committed before the date of this Plea Agreement that was undertaken in furtherance of
16 an antitrust conspiracy or scheme to defraud involving the FCC's E-Rate program ("Relevant
17 Offense"). The nonprosecution terms of this paragraph do not apply to civil matters of any kind,
18 to any violation of the federal tax or securities laws, or to any crime of violence.
19

20 19. The defendant understands that it may be subject to administrative action
21 by federal or state agencies other than the United States Department of Justice, Antitrust
22 Division, based upon the conviction resulting from this Plea Agreement, and that this Plea
23 Agreement in no way controls whatever action, if any, other agencies may take. However, the
24 United States agrees that, if requested, it will advise the appropriate officials of any governmental
25 agency considering such administrative action of the fact, manner, and extent of the cooperation
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1 of the defendant as a matter for that agency to consider before determining what administrative
2 action, if any, to take.

3 REPRESENTATION BY COUNSEL

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5 20. The defendant has been represented by counsel and is fully satisfied that its
6 attorneys have provided competent legal representation. The defendant has thoroughly reviewed
7 this Plea Agreement and acknowledges that counsel has advised it of the nature of the charges,
8 any possible defenses to the charges, and the nature and range of possible sentences.

9 VOLUNTARY PLEA

10
11 21. The defendant's decision to enter into this Plea Agreement and to tender a plea of
12 guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises,
13 or representations other than the representations contained in this Plea Agreement. The United
14 States has made no promises or representations to the defendant as to whether the Court will
15 accept or reject the recommendations contained within this Plea Agreement.

16 VIOLATION OF PLEA AGREEMENT

17
18 22. The defendant agrees that, should the United States determine in good faith,
19 during the period that any Federal Proceeding is pending, that the defendant has failed to provide
20 full and truthful cooperation, as described in Paragraph 16 of this Plea Agreement, or has
21 otherwise violated any provision of this Plea Agreement, the United States will notify the
22 defendant or its counsel in writing by personal or overnight delivery or facsimile transmission,
23 and may also notify its counsel by telephone, of its intention to void any of its obligations under
24 this Plea Agreement (except its obligations under this paragraph), and the defendant shall be
25 subject to prosecution for any federal crime of which the United States has knowledge, including,
26 but not limited to, the substantive offenses relating to the investigation resulting in this Plea
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1 Agreement. The defendant may seek Court review of any determination made by the United
2 States under this paragraph to void any of its obligations under the Plea Agreement. The
3 defendant agrees that, in the event that the United States is released from its obligations under
4 this Plea Agreement and brings criminal charges against the defendant for any Relevant Offense,
5 the statute of limitations period for such offense will be tolled for the period between the date of
6 the signing of this Plea Agreement and six (6) months after the date the United States gave notice
7 of its intent to void its obligations under this Plea Agreement.
8

9 23. The defendant understands and agrees that in any further prosecution of it
10 resulting from the release of the United States from its obligations under this Plea Agreement
11 based on the defendant's violation of the Plea Agreement, any documents, statements,
12 information, testimony, or evidence provided by it or current or former directors, officers, or
13 employees of it to attorneys or agents of the United States, federal grand juries, or courts, and any
14 leads derived therefrom, may be used against it in any such further prosecution. In addition, the
15 defendant unconditionally waives its right to challenge the use of such evidence in any such
16 further prosecution, notwithstanding the protections of Fed. R. Evid. 410.
17

18 ENTIRETY OF AGREEMENT

19
20 24. This Plea Agreement constitutes the entire agreement between the United States
21 and the defendant concerning the disposition of the criminal charges in this case. This Plea
22 Agreement cannot be modified except in writing, signed by the United States and the defendant.
23

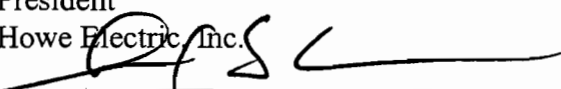
24 25. The undersigned is authorized to enter this Plea Agreement on behalf of the
25 defendant as evidenced by the Resolution of the Board of Directors of the defendant attached to,
26 and incorporated by reference in, this Plea Agreement.
27
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1 26. The undersigned attorneys for the United States have been authorized by the
2 Attorney General of the United States to enter into this Plea Agreement on behalf of the United
3 States.
4

5 DATED: 6/18/08
6

7 BY: 

8 CLINTON HOWE
9 President
10 Howe Electric, Inc.

11 BY: 

12 Gail Shifman, Esq.
13 Shifman Group, Attorneys
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Respectfully submitted,

BY: 

Michael F. Wood
Richard B. Cohen
Brian J. Stack
Jason M. Katz
Albert B. Sambat
Anna Tryon Pletcher
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EXHIBIT A

UNITED STATES v. HOWE ELECTRIC, INC.

PLEA AGREEMENT

CR-05-0208 CRB

EXHIBIT A

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (Agreement) is entered into by the United States of America, acting through the United States Department of Justice and on behalf of the Federal Communications Commission (the FCC), including the Universal Service Administrative Company (USAC), the entity that administers the E-rate program for the FCC (collectively, the United States); the San Francisco Unified School District (SFUSD); the City Attorney for the City and County of San Francisco (City Attorney); and Howe Electric, Inc. (Howe), through their authorized representatives. The parties listed in this Paragraph are hereinafter referred to individually as a Party and collectively referred to as the Parties.

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. Howe is a corporation organized and existing under the laws of California with its principal place of business in Fresno, California. Howe does not operate as a common carrier.

B. E-Rate is a program created by Congress in the Telecommunications Act of 1996 and administered for the FCC by USAC, a not for profit corporation incorporated in Delaware.

C. On or about May 16, 2002, San Francisco Unified School District (SFUSD) and the People of the State of California *ex rel.* Dennis J. Herrera (the People) filed a civil action in the United States District Court for the Northern District of California against Inter-Tel and others, styled *United States ex rel. San Francisco Unified School District, et al. v. Nippon Electric Company Business Network Solutions, et al.*, No. C 02-2398 CRB (the Civil Action). On or about May 27, 2004, SFUSD and the People filed an amended complaint in the Civil Action, naming Howe and others as defendants. On or about January 28, 2005, the United States intervened in the First Amended Complaint with respect to Howe. In the First Amended Complaint, SFUSD asserted claims as a *qui tam* relator under the Federal False Claims Act (FCA), 31 U.S.C. §§ 3729-3733, and the California FCA, Cal. Gov't. Code §§ 12650-12652.

SFUSD also asserted claims on its own behalf pursuant to the California FCA, claims of fraud and deceit pursuant to Cal. Civ. Code §§ 1709-10, and claims under the common law theory of negligent misrepresentation. In addition, the San Francisco City Attorney (City Attorney) asserted a claim on behalf of the People pursuant to Cal. Bus. & Prof. Code § 17200, *et seq.* The allegations against Howe in the First Amended Complaint relate to Howe's participation in the E-rate program.

D. The United States, SFUSD, and the City Attorney contend that they have certain civil claims against Howe under the Federal FCA and the other authorities set forth in the First Amended Complaint in the Civil Action for Howe's conduct in submitting and causing to be submitted false claims for payment under the E-rate program from approximately June 1999 to August 2001 for work at West Fresno, California Elementary School District and W.E.B. Dubois Public Charter School in Fresno, California by: (1) engaging in non-competitive bidding practices; (2) claiming and receiving E-rate funds for goods and services that were ineligible for E-rate funding; (3) providing false information to the United States regarding the goods and services that were provided to schools and school districts under the E-rate program; (4) disregarding the requirement that schools and school districts make co-payments to match a percentage of the E-rate funds disbursed on their behalf; and (5) inflating prices on invoices and other documents provided to the United States to conceal some or all of the practices listed in this Paragraph. The conduct described in this Paragraph is hereinafter referred to as the Covered Conduct.

E. This Agreement is neither an admission of liability by Howe nor a concession by the United States, SFUSD, or the City Attorney that their claims are not well-founded.

F. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties reach a full and final settlement pursuant to the Terms and Conditions below.

III. TERMS AND CONDITIONS

1. Howe agrees to pay to the United States \$3,000,000 (the Settlement Amount) by electronic funds transfer pursuant to written instructions provided by the United States Attorney's Office for the Northern District of California, as follows:

a.) Within five calendar days of the Effective Date of this Agreement (as defined in Paragraph 22 below), Howe will pay the United States the amount of \$1,000,000; and

b.) The balance of the Settlement Amount (\$2,000,000), together with accrued interest computed at the rate of five percent per annum on the unpaid balance hereof, from the Effective Date of this Agreement until the date the entire balance including accrued interest has been paid in full, will be paid in quarterly installments (Installment Payments). The Installment Payments will be made according to the following schedule:

- (i) \$264,266.27 on or before September 1, 2008;
- (ii) \$264,266.27 on or before December 1, 2008;
- (iii) \$264,266.27 on or before March 1, 2009;
- (iv) \$264,266.27 on or before June 1, 2009;
- (v) \$264,266.27 on or before September 1, 2009;
- (vi) \$264,266.27 on or before December 1, 2009;
- (vii) \$264,266.27 on or before March 1, 2010; and
- (viii) \$264,266.29 on or before June 1, 2010.

In the event that the balance of the Settlement Amount is accelerated as described in Paragraph 5 below, the entire unpaid balance shall bear interest at the rate of seven percent per annum until paid.

2. Howe's shareholders, Clinton Howe and Clifford Howe, have each executed a guarantee (the Guarantees) to ensure payment of the Settlement Amount, together with interest as set forth in Paragraph 1. Copies of the executed Guarantees are attached hereto as Exhibits A and B, and are incorporated into this Agreement by reference.

3. Howe further agrees to pay SFUSD \$55,000 for expenses and attorney's fees and costs within five calendar days of the Effective Date of this Agreement, by electronic funds transfer to SFUSD's outside counsel, Phillips & Cohen LLP (P&C), pursuant to written instructions provided by P&C.

4. Upon timely payment of the amounts set out in Paragraphs 1(a) and 3 above, the United States, SFUSD, and the City Attorney will dismiss Howe from the Civil Action with prejudice, subject to the provisions of Paragraph 5 below.

5. If Howe fails to make any payment in the amount specified above in Paragraph 1 when due, such failure will be an event of default (Event of Default). Upon the occurrence of an Event of Default, the unpaid balance of the Settlement Amount, plus all unpaid interest accrued thereon, together with any late fee(s) and/or administrative charges (as permitted pursuant to federal law), plus the costs of collection, litigation, and attorney's fees (collectively, the Debt), shall all become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by Howe, and the United States may, at its option, (a) collect the Debt plus additional interest from the date of the Event of Default at the rate of seven percent per annum, whether by suing Howe to enforce this Agreement or collecting on the Guarantees, or both; and/or (b) file a civil action against Howe for the Covered Conduct. In the event a complaint is filed pursuant to this Paragraph, Howe agrees that it will not plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to the allegations in the complaint, except to the extent such defenses were available on January 28, 2005.

6. Howe agrees to cooperate with the United States in any investigation or litigation related to the E-rate program.

7. Releases:

a.) Howe fully and finally releases the United States, SFUSD, and the City Attorney, together with their respective agencies, employees, servants, and agents, from any claims

(including attorney's fees, costs, and expenses of every kind and however denominated) which Howe has asserted, could have asserted, or may assert in the future against the United States, SFUSD, the City Attorney, and/or their respective agencies, employees, servants, and agents, related to the Covered Conduct, the Information, the Plea Agreement, and the investigation and prosecution thereof. Howe also fully and finally releases the United States, together with its respective agencies, employees, servants, and agents, from any claims that Howe has asserted, could have asserted, or may assert in the future against the United States, its respective agencies, employees, servants, and agents for reimbursement for past or future E-rate work performed under contracts tainted by the misconduct described in Paragraph D, including without limitation all claims for reimbursement associated with the Funding Request Numbers (FRNs) set forth in Exhibit C attached hereto.

b.) Subject to the reservations and exclusions in Paragraph 8 below, and subject to Paragraph 14 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), in consideration of the obligations and promises of Howe set forth in this Agreement, and conditioned upon Howe's full payment of the Settlement Amount, together with all accrued interest as provided herein:

(i) the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to fully and finally release Howe and its predecessors, successors, and assigns, and any of their present or former directors, officers, and employees, from any civil or administrative monetary claim the United States has or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, disgorgement, restitution, recoupment, breach of contract, and fraud; and

(ii) the FCC (on behalf of itself, its officers, employees, and agents, and on behalf of USAC) agrees to release Howe and its predecessors, successors, and assigns, and any of their

present or former directors, officers, and employees, from any administrative monetary claims the FCC has or may have for the Covered Conduct.

(iii) SFUSD (on behalf of itself, its officers and agents) agrees to fully and finally release Howe and its predecessors, successors, and assigns, and any of their present or former directors, officers, and employees, from any civil or administrative monetary claim SFUSD has or may have under the False Claims Act, the California False Claims Act, Cal. Civ. Code §§ 1709-10, Cal. Bus. & Prof. Code § 17200, et seq. or the common law for the Covered Conduct; and

(iv) the City Attorney (acting on behalf of the People to the full extent of the City Attorney's legal authority to do so) agrees to fully and finally release Howe and its predecessors, successors, and assigns, and any of their present or former directors, officers, and employees, from any civil or administrative monetary claim the People have or may have under Cal. Bus. & Prof Code § 17200, et seq. for the Covered Conduct.

c.) Subject to the exceptions in Paragraph 8 below, Howe, SFUSD and the People expressly waive the provisions of Section 1542 of the California Civil Code, which provides as follows:

CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE: -- A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Howe, SFUSD and the People understand and acknowledge that the significance and consequence of this waiver of Civil Code Section 1542 is that even if one of those Parties should eventually suffer additional damages as arising out of the Covered Conduct or the investigation or litigation of the Covered Conduct, that Party will not be permitted to make any claims for such damages. Furthermore, with the exceptions of those matters identified in Paragraph 8, Howe, SFUSD and the People acknowledge that they intend these consequences even as to claims for injuries and/or damages that may exist as of the date of this release but which they do

not know exist and which, if known, would materially affect the decision to execute this agreement.

8. Notwithstanding any other term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including Howe) are the following claims: (a) any civil, criminal, or administrative liability to the United States arising under Title 26, U.S. Code (Internal Revenue Code); (b) any criminal liability; (c) any process or proceeding, administrative or judicial, for any agency suspension or debarment action; (d) any liability to the United States (or its agencies) for any conduct other than the Covered Conduct; (e) any claims of the United States, SFUSD or City Attorney based upon such obligations as are created by this Agreement; (f) any liability for the delivery of any deficient or defective products/services (including any products or services provided to any school(s) or school district(s) as part of the Covered Conduct), including liability under any express or implied product/service liability warranties; and (g) any civil or administrative claims of the United States against individuals, including but not limited to present or former directors, officers, and employees of Howe and any affiliates, subsidiaries, and parent corporations, and their predecessors, successors, and assigns who are criminally indicted or charged, or are convicted, or who enter into a criminal plea agreement related to the Covered Conduct.

9. This Agreement is intended to be for the benefit of the Parties only. Except as expressly stated in Paragraph 7 above, the Parties do not release any claims against any other person or entity.

10. Howe waives and shall not assert any defenses Howe may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this Paragraph or any other provision of this Agreement constitutes an agreement by

the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue Laws, Title 26 of the United States Code.

11. Howe agrees that all costs (as defined by Federal Acquisition Regulation 31.205-47) incurred by or on behalf of Howe in connection with (a) the matters covered by this Agreement; (b) the Government's audits and investigations of the matters covered by this Agreement; (c) Howe's investigation, defense of the matters, and corrective actions relating to the Covered Conduct; (d) the negotiation of this Agreement; and (e) the payments made to the United States pursuant to this Agreement, shall be unallowable costs for government accounting purposes. Howe shall separately account for all costs that are unallowable under this Agreement.

12. SFUSD and its successors, attorneys, agents, and assigns agree not to object to this Agreement and agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B).

13. Howe expressly warrants that it has reviewed its financial condition and that it is currently solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following payment of the Settlement Amount. Howe further warrants that it has or has access to sufficient assets to pay the Settlement Amount. Further, the Parties expressly warrant that, in evaluating whether to execute this Agreement, the Parties (a) have intended that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to Howe within the meaning of 11 U.S.C. § 547(c)(1), and (b) have concluded that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended and do, in fact, represent a reasonably equivalent exchange of value which is not intended to hinder, delay, or defraud any entity to which Howe was or became indebted on or after the date of this transfer, all within the meaning of 11 U.S.C. § 548(a)(1).

14. If within 91 days of the Effective Date of this Agreement or of any payment made under this Agreement, Howe commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of Howe's debts, or seeking to adjudicate Howe as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Howe or for all or any substantial part of Howe's assets, Howe agrees as follows:

a.) Howe's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Howe shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) Howe's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) Howe was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the United States; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Howe.

b.) If Howe's obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the United States, at its sole option, may rescind the releases in this Agreement, and bring any civil and/or administrative claim, action, or proceeding against Howe for the claims that would otherwise be covered by the releases provided in Paragraph 7 above. Howe agrees that (i) any such claims, actions, or proceedings brought by the United States (including any proceedings to debar Howe from participation in the E-rate or other federal programs) are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceeding described in the first clause of this Paragraph 14, and Howe shall not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) Howe shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceeding that are brought by the United States within 30

calendar days of written notification to Howe that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on January 28, 2005; and (iii) the United States has a valid claim against Howe in the amount of at least \$4.5 million, and the United States may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c.) Howe acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

15. Howe agrees that this Agreement satisfies the requirements of the citation provision under subsections 503(b)(5)(A)-(B) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b)(5)(A)-(B), such that the FCC may issue a Notice of Apparent Liability against Howe pursuant to 47 U.S.C. § 503(b)(4) if, after the Effective Date of this Agreement, Howe engages in non-competitive bidding or other conduct of the type described in Paragraph D(1)-(5) of this Agreement.

16. The United States and Howe shall each bear their own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

17. All Parties represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever and that they all have had an opportunity to consult their respective attorneys.

18. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between the Parties under this Agreement shall be the United States District Court for the Northern District of California.

19. This Agreement constitutes the complete agreement between and among the Parties with respect to civil and administrative liability for the Covered Conduct. This Agreement may not be amended except by written consent of the Parties.

20. The individuals signing this Agreement on behalf of Howe represent and warrant that they are authorized by Howe to execute this Agreement. The United States, SFUSD, and

City Attorney signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

21. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

22. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date).

23. This Agreement is binding on Howe's successors, transferees, and assigns.

24. All Parties consent to disclosure of this Agreement, and information about this Agreement, to the public.

THE UNITED STATES OF AMERICA

DATED: May 19, 2008

BY: 

ALICIA J. BENTLEY
Trial Attorney
Commercial Litigation Branch
Civil Division
U.S. Department of Justice

JOSEPH P. RUSSONIELLO

United States Attorney
Northern District of California

BY: 

DATED: 5/30/08

SARA WINSLOW
Assistant United States Attorney
On behalf of the United States and the
Federal Communications Commission

SAN FRANCISCO UNIFIED SCHOOL DISTRICT

DATED: 5/22/08

BY: Angela Miller
~~TODD GOLIBRA~~ ANGELA MILLER
Interim General Counsel Senior Deputy General Counsel
San Francisco Unified School District

PHILLIPS & COHEN LLP

DATED: 5/16/08

BY: Eric R. Havian
ERIC R. HAVIAN
Attorney for SFUSD


CITY ATTORNEY FOR THE CITY AND COUNTY OF SAN FRANCISCO

DATED: 5/16/08

BY: Owen Clements
OWEN CLEMENTS
Chief, Special Litigation
San Francisco City Attorney's Office
On Behalf of the People of the
State of California

HOWE ELECTRIC, INC.

DATED: 5/28/2008

BY: 
CLINTON HOWE
President, Howe Electric, Inc.

DATED: 5/29/08

SHIFMAN GROUP


BY: 
GAIL SHIFMAN
Attorney for Howe Electric, Inc.

EXHIBIT A

GUARANTEE

I, Clinton Howe, a shareholder of Howe Electric, Inc. (Howe), hereby acknowledge Howe's indebtedness to the United States of America in the amount of \$3,000,000, together with interest as more fully set forth in the Settlement Agreement between the United States of America and Howe, a copy of which is attached hereto as Exhibit A (the Settlement Agreement). I recognize the benefits that Howe is obtaining from the Settlement Agreement, and that such benefits inure to me as a shareholder. Accordingly, I hereby unconditionally and irrevocably guarantee to the United States the prompt and complete payment and performance by Howe when due (by acceleration or otherwise) of the amount of \$3,000,000 plus accrued interest.

If, within ten (10) days of receipt of notice to me from the United States that Howe has failed to make payment of any amount owed to the United States under the terms of the Settlement Agreement, when due, I do not make payment of the full outstanding balance (including interest) due, the United States may proceed against me in my individual capacity to immediately enforce collection of the entire amount then due and owing to the United States, plus interest and the costs of collection (including reasonable attorney's fees), by filing a lawsuit or by any other legal methods available. In such event, I agree to be jointly and severally liable for the entire amount then due and owing, plus interest and costs thereof. I hereby waive promptness, diligence, protest, presentment, notice of acceptance and, except as expressly provided herein, any and all notices of any kind and any requirement that the United States exhaust any right or take any action against any other person or entity or collateral.

All notices, requests, demands and other communications under this Guarantee shall be in writing and shall be deemed to have been duly given: (a) on the date of service if served personally on the Party to whom notice is to be given; (b) on the day of transmission if sent via facsimile transmission to the facsimile number given below, and electronic confirmation of receipt is obtained; or (c) on the day after delivery to Federal Express or similar overnight courier

service, prepaid and properly addressed, to the Party as follows:

Clinton Howe
4682 E. Olive Avenue
Fresno CA 93702

With a copy to:

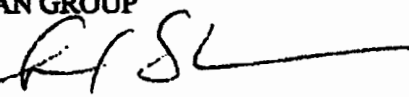
Gail Shifman, Esq.
Shifman Group, Attorneys
44 Montgomery Street, Suite 3850
San Francisco CA 94104

I agree that the exclusive jurisdiction and venue for any dispute arising between the United States and me with respect to this Guarantee or the Settlement Agreement shall be the United States District Court for the Northern District of California, and that any such dispute will be governed by and interpreted in accordance with the laws of the United States. I agree that I will indemnify the United States against all losses, costs and expenses incurred in connection with the enforcement of this Guarantee against me.

DATED: 5/20/02 BY: 
CLINTON HOWE

APPROVED:

SHIFMAN GROUP

BY: 
GAIL SHIFMAN, ESQ.
Attorney for Howe Electric, Inc.,
Clinton Howe, and Clifford Howe

JOSEPH P. RUSSONIELLO
United States Attorney
Northern District of California

BY: 
SARA WINSLOW
Assistant United States Attorney

EXHIBIT B

GUARANTEE

I, Clifford Howe, a shareholder of Howe Electric, Inc. (Howe), hereby acknowledge Howe's indebtedness to the United States of America in the amount of \$3,000,000, together with interest as more fully set forth in the Settlement Agreement between the United States of America and Howe, a copy of which is attached hereto as Exhibit A (the Settlement Agreement). I recognize the benefits that Howe is obtaining from the Settlement Agreement, and that such benefits inure to me as a shareholder. Accordingly, I hereby unconditionally and irrevocably guarantee to the United States the prompt and complete payment and performance by Howe when due (by acceleration or otherwise) of the amount of \$3,000,000 plus accrued interest.

If, within ten (10) days of receipt of notice to me from the United States that Howe has failed to make payment of any amount owed to the United States under the terms of the Settlement Agreement, when due, I do not make payment of the full outstanding balance (including interest) due, the United States may proceed against me in my individual capacity to immediately enforce collection of the entire amount then due and owing to the United States, plus interest and the costs of collection (including reasonable attorney's fees), by filing a lawsuit or by any other legal methods available. In such event, I agree to be jointly and severally liable for the entire amount then due and owing, plus interest and costs thereof. I hereby waive promptness, diligence, protest, presentment, notice of acceptance and, except as expressly provided herein, any and all notices of any kind and any requirement that the United States exhaust any right or take any action against any other person or entity or collateral.

All notices, requests, demands and other communications under this Guarantee shall be in writing and shall be deemed to have been duly given: (a) on the date of service if served personally on the Party to whom notice is to be given; (b) on the day of transmission if sent via facsimile transmission to the facsimile number given below, and electronic confirmation of receipt is obtained; or (c) on the day after delivery to Federal Express or similar overnight courier

service, prepaid and properly addressed, to the Party as follows:

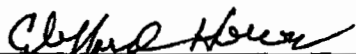
Clifford Howe
4682 E. Olive Avenue
Fresno CA 93702

With a copy to:

Gail Shifman, Esq.
Shifman Group, Attorneys
44 Montgomery Street, Suite 3850
San Francisco CA 94104

I agree that the exclusive jurisdiction and venue for any dispute arising between the United States and me with respect to this Guarantee or the Settlement Agreement shall be the United States District Court for the Northern District of California, and that any such dispute will be governed by and interpreted in accordance with the laws of the United States. I agree that I will indemnify the United States against all losses, costs and expenses incurred in connection with the enforcement of this Guarantee against me.

DATED: 5/28/08

BY: 
CLIFFORD HOWE

APPROVED:

SHIFMAN GROUP

BY: 

GAIL SHIFMAN, ESQ.
Attorney for Howe Electric, Inc.,
Clinton Howe, and Clifford Howe

JOSEPH P. RUSSONIELLO
United States Attorney
Northern District of California

BY: 

SARA WINSLOW
Assistant United States Attorney

Exhibit C
Released FRNs for West Fresno and W.E.B. DuBois

Funding Year	BEN	Entity Name	FRN
<u>FY 1998</u>			
1998	144063	West Fresno Elementary School District	57116
<u>FY 1999</u>			
1999	144063	West Fresno Elementary School District	280490
1999	144063	West Fresno Elementary School District	279376
1999	144063	West Fresno Elementary School District	279375
1999	144063	West Fresno Elementary School District	279374
1999	144063	West Fresno Elementary School District	279373
1999	144063	West Fresno Elementary School District	279371
1999	144063	West Fresno Elementary School District	278678
1999	144063	West Fresno Elementary School District	278675
1999	144063	West Fresno Elementary School District	278670
1999	144063	West Fresno Elementary School District	280494
1999	144063	West Fresno Elementary School District	280497
1999	144063	West Fresno Elementary School District	280500
1999	144063	West Fresno Elementary School District	278655
1999	144063	West Fresno Elementary School District	278663
1999	144063	West Fresno Elementary School District	278667
<u>FY 2000</u>			
2000	144063	West Fresno Elementary School District	451850
2000	144063	West Fresno Elementary School District	451847
2000	144063	West Fresno Elementary School District	451842
2000	208257	W.E.B. DuBois Public Charter School	459166
2000	208257	W.E.B. DuBois Public Charter School	459170
2000	208257	W.E.B. DuBois Public Charter School	459152
2000	208257	W.E.B. DuBois Public Charter School	459148
2000	144063	West Fresno Elementary School District	451855
2000	144063	West Fresno Elementary School District	451853
2000	208257	W.E.B. DuBois Public Charter School	459156

EXHIBIT B

UNITED STATES v. HOWE ELECTRIC, INC.

PLEA AGREEMENT

CR-05-0208 CRB

EXHIBIT B

HOWE ELECTRIC, INC.

**Unanimous Written Consent of the
Board of Directors in Lieu of Meeting**

The undersigned, being all the Directors of Howe Electric, Inc., a California Corporation (the "Corporation"), hereby consent to, approve and adopt the following preamble and resolutions:

WHEREAS, the Corporation has been the subject of an investigation conducted by the U.S. Department of Justice and the U.S. Attorney (collectively, the "Government") regarding the Company's participation in a federally funded program commonly known as the E-rate Program (the "Investigation"); and

WHEREAS, as a result of the Investigation, the Government has alleged that the Corporation acted illegally (the "Allegations"); and

WHEREAS, as a result of the Investigation the San Francisco Unified School District filed a civil action against the Corporation in which the Government intervened, alleging, among other things, violations under the Federal False Claims Act (the "Civil Action"); and

WHEREAS, the Corporation has fully cooperated with the Government during the Investigation and has negotiated a settlement with the Government regarding the Allegations and the Civil Action (respectively, the "Plea Agreement" and the "Settlement Agreement"),

NOW THEREFORE, it is

RESOLVED, that the Corporation is hereby authorized to negotiate, complete and execute the Plea Agreement and the Settlement Agreement in a form substantially similar to Exhibit A attached hereto,

FURTHER RESOLVED, that the Corporation shall enter a plea in the U.S. District Court for the Northern District of California as more fully set forth in the Plea Agreement mentioned herein; and

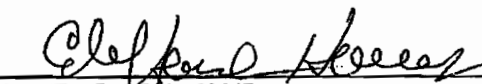
FURTHER RESOLVED, that Clinton Howe, President of the Corporation, be and hereby is authorized and directed to do and perform, in the name on behalf of the Company, all such acts and things, and to execute and deliver all such documents and instruments, including but not limited to the Plea Agreement and the Settlement Agreement under the seal of the Corporation or otherwise, as such officer may deem necessary or

advisable to consummate the resolution of the Allegations and Civil Action
and carry out the intent and purposes of the foregoing resolutions.

This consent may be executed in counter parts and all so executed shall
constitute one and the same instrument.

Consented to as of the 28th of May, 2008


CLINTON HOWE


CLIFFORD HOWE